IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Inline Connection Corporation, Plaintiff, v. Verizon Internet Services, Inc., et al., Defendants.	Civil Action No. 05-866 (JJF)

MOTION TO ENFORCE COURT'S PRIOR DISCOVERY ORDER (D.I. 97)

Pursuant to Rule 37, Fed. R. Civ. P., Local Rule 37.1, Paragraph 4 of this Court's form Rule 16 Scheduling Order and the Court's April 24, 2006 Memorandum Order (D.I. 97) granting Defendants' Motion To Compel Discovery Regarding Threshold Jurisdictional "Ownership" Issue, the Verizon defendants[1] respectfully move that the Court establish a specific time schedule for plaintiff Inline Connection Corporation ("Inline") to comply with the Court's April 24 Memorandum Order. In support of this motion, Defendants show as follows:

1. On March 28, 2006, the Verizon defendants filed their Motion To Compel Discovery Regarding Threshold Jurisdictional "Ownership" Issue (D.I. 88), requesting an order directing Inline "to provide full and complete answers to Interrogatory Nos. 8 and 13, and production of all documents responsive to Document Request Nos. 36, 37, 46 and 57-59."

2. On April 24, the Court issued its Memorandum Order (D.I. 97), granting Defendants' motion and ordering Plaintiff "to respond to discovery requests relevant to the ownership

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[1] The Verizon defendants are Verizon Internet Services, Inc., GTE.Net LLC, Verizon Services Corp., Telesector Resources Group, Inc., Verizon Corporate Services Group, Inc., Verizon Advanced Data, Inc., Verizon Avenue Corp., Verizon Delaware, Inc., and GTE Southwest, Inc. *d/b/a* Verizon Southwest.

defense." As the Court's Order recognized, ownership is a threshold issue that affects both Inline's standing and jurisdiction, and as such falls within Defendants' unenforceability defenses.

3. On April 25, Defendants' counsel sent an email to Inline's counsel concerning the ownership discovery (Exhibit 1). The email requested immediate production of various Inline, BBTI and Pie Squared ownership-related documents that had previously been produced to AOL and Earthlink in the co-pending *AOL* case approximately two months ago. As the email pointed out, these documents should be immediately available from the files of Ms. Van Over, who is simultaneously counsel of record for Inline in both the present action and in the *AOL* case. Defendants further requested that Inline complete its response to the Memorandum Order regarding "ownership" discovery by May 4.

4. On April 26, Inline's counsel responded by email (Exhibit 2). Inline declined to provide immediate production of the ownership documents previously produced in the *AOL* case. Inline stated that it would make a selective production of certain unspecified "agreements" relating to the ownership issue sometime next week. Finally, Inline indicated that it would withhold indefinitely any further responses to the Court-ordered ownership discovery until Inline takes its own comprehensive discovery from Defendants regarding invalidity and unenforceability.[2]

ARGUMENT

Defendants respectfully request that the Court set a firm time schedule for Inline to comply fully with the Court's previous "ownership" discovery order (D.I. 97). Ownership is a threshold standing/jurisdictional issue that must be addressed at the outset.

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2 The email references an indefinite future "timeframe that we discuss and agree to, as discussed in my letter to you today." The referenced letter is attached as Exhibit 3 (dated April 18, but actually sent on April 26), while Defendants' April 27 response is attached as Exhibit 4.

Inline, however, refuses to provide prompt production of ownership-related documents which were previously produced months ago in the *AOL* case and are therefore immediately available. Instead, Inline will agree only to provide certain unspecified and unilaterally selected "agreements" by the end of next week. As for the answers to Interrogatory Nos. 8 and 13, as well as all other documents responsive to Document Request Nos. 36, 37, 46 and 57-59, Inline is holding that discovery "hostage" until it obtains open-ended discovery from Defendants on other unrelated invalidity/unenforceability issues.

The Court should reject Inline's attempts to impose indefinite delay and unilateral conditions on full compliance with this Court's April 24 Memorandum Order (D.I. 97). The Court should direct Inline to comply promptly according to the following specific time schedule:

A. Inline shall produce to Defendants all Inline/BBTI/Pie Squared ownership-related documents previously produced in the *AOL* case within 24 hours.

B. Inline shall produce to Defendants all Inline/BBTI/Pie Squared ownership-related agreements not previously produced in the *AOL* case on or before May 5, 2006.

C. Inline shall provide full and complete answers to Interrogatory Nos. 8 and 13, as well as all other documents responsive to Document Request Nos. 36, 37, 46 and 57-59, on or before May 15, 2006.

Respectfully submitted,

By: /s/ Jeffrey B. Bove

Jeffrey B. Bove (#998)
jbove@cblh.com
Kevin M. Baird (#4219)
CONNOLLY BOVE LODGE & HUTZ LLP
The Nemours Building
1007 North Orange Street, Suite 878
Wilmington, DE 19801
Telephone: 302.658.9141
Facsimile: 302.658.5614
Counsel for Verizon Defendants

OF COUNSEL:
John B. Wyss
Kevin P. Anderson
WILEY REIN & FIELDING LLP
1776 K Street NW
Washington, DC 20006
Telephone: 202.719.7000
Facsimile: 202.719.7049

Dated: April 28, 2006

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ORDER

At Wilmington, this _________ day of _________________________, 2006, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that: Defendants' Motion To Enforce Court's Prior Discovery Order (D.I. 97) is **GRANTED**;

IT IS FURTHER ORDERED that:

A. Inline shall produce to Defendants all Inline/BBTI/Pie Squared ownership-related documents previously produced in the *AOL* case within 24 hours.

B. Inline shall produce to Defendants all Inline/BBTI/Pie Squared ownership-related agreements not previously produced in the *AOL* case on or before May ___, 2006.

C. Inline shall provide full and complete answers to Interrogatory Nos. 8 and 13, as well as all other documents responsive to Document Request Nos. 36, 37, 46 and 57-59, on or before May ___, 2006.

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UNITED STATES DISTRICT JUDGE

STATEMENT PURSUANT TO D. DEL. LR 7.1.1

I, Jeffrey B. Bove, Esq., counsel for the Verizon defendants, hereby state that prior to filing the present motion, the parties have attempted to reach an agreement on the matters set forth in Defendants' Motion To Enforce Court's Prior Discovery Order (D.I. 97), but have been unable to do so.

Dated: April 28, 2006

/s/ Jeffrey B. Bove
Jeffrey B. Bove (#998)

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2006 a true copy of the ***Motion To Enforce Court's Prior Discovery Order (D.I. 97)*** was sent to plaintiff's counsel, in the manner indicated, upon:

Michael K. Plimack, Esq. (Served electronically & by overnight delivery)
Alexander L. Brainerd, Esq.
HELLER EHRMAN LLP
333 Bush Street
San Francisco, California 94104
Alexander.Brainerd@hellerehrman.com
Michael.Plimack@hellerehrman.com

C. Joël Van Over, Esq. (Served electronically & by overnight delivery)
BINGHAM MCCUTCHEN LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116
joel.vanover@bingham.com

Julia Heaney, Esq. (Served by hand delivery)
MORRIS NICHOLS ARSHT & TUNNELL LLP
1201 N. Market Street
Post Office Box 1347
Wilmington, Delaware 19899-1347
jheaney@mnat.com

/s/ Jeffrey B. Bove
Jeffrey B. Bove (#998)
jbove@cblh.com
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street, Suite 878
Wilmington, DE 19801
Telephone: 302.658.9141

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